

In the Court of Appeals of the State of Alaska

Korakanh Phornsavanh,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-12499**

Order

Motion for Remand

Date of Order: **8/27/2021**

Corrected Order issued: 8/30/2021

Trial Court Case No. **3AN-13-06468CR**

Before: Allard, Chief Judge, and Harbison, Judge and Suddock,
Senior Superior Court Judge.*

In *Phornsavanh v. State*, this Court remanded Phornsavanh’s case to the trial court for reconsideration of Phornsavanh’s motion for a new trial on the ground that the verdicts were against the weight of the evidence.¹ As we explained in our decision, when a trial court rules on a motion for a new trial based on the weight of the evidence, the trial court must take a “personal view of the evidence” and “exercise its discretion and independently weigh the evidence.”² The trial court must then “use its discretion to determine whether a verdict is against the weight of the evidence — not merely whether the trial court disagrees with the verdict — and whether a new trial is necessary ‘in the interest of justice,’ that is, ‘to prevent injustice.’ ”³

* Sitting by assignment made under article IV, section ~~16~~ 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

¹ *Phornsavanh v. State*, 481 P.3d 1145, 1160 (Alaska App. 2021).

² *Id.* at 1159 (internal quotations omitted) (quoting *Hunter v. Philip Morris USA Inc.*, 364 P.3d 439, 447 (Alaska 2015)); *see also Kava v. American Honda Motor Co., Inc.*, 48 P.3d 1170, 1177 (Alaska 2002).

³ *Phornsavanh*, 481 P.3d at 1159 (quoting *Hunter*, 364 P.3d at 448).

The critical question therefore is not whether the trial court merely disagrees with the jury’s verdict; rather it is whether the trial court believes that the verdict is unjust.⁴ A jury’s verdict is not to be overturned lightly.⁵ A trial court should grant a motion for a new trial only in “exceptional circumstances,” such as when there is “a real concern that an innocent person may have been convicted.”⁶ As the Second Circuit has noted, “[i]t is only when it appears that an injustice has been done that there is a need for a new trial ‘in the interest of justice’.”⁷

In the original proceedings in Phornsavanh’s case, the trial court did not take a “personal view” of the trial evidence. Nor did the court directly opine on whether a new trial was needed to prevent injustice. Instead, the court simply deferred to what a “reasonable juror” could conclude based on the evidence, a standard more akin to the standard used to determine a motion for judgment of acquittal rather than the discretionary standard that a trial court should use to determine if a new trial is needed to prevent injustice. We therefore remanded Phornsavanh’s case to the trial court for

⁴ *Id.*; see also 11 Mary Kay Kane, Wright & Miller Fed. Prac. & Proc. Civ. § 2806 (3d ed. 2021) (noting that a trial judge “does not sit to approve miscarriages of justice”).

⁵ *Phornsavanh*, 481 P.3d at 1158 (citing *Hunter*, 364 P.3d at 448); see also *Dorman v. State*, 622 P.2d 448, 454 (Alaska 1981).

⁶ *Phornsavanh*, 481 P.3d at 1159 (quoting *United States v. Sanchez*, 969 F.2d 1409, 1414 (2d Cir. 1992)); see also *United States v. Morales*, 910 F.2d 467, 468 (7th Cir. 1990), *amending* 902 F.2d 604 (7th Cir. 1990) (noting that “[i]f the complete record, testimonial and physical, leaves a strong doubt as to the defendant’s guilt, even though not so strong a doubt as to require a judgment of acquittal, the district judge may be obliged to grant a new trial”).

⁷ *Sanchez*, 969 F.2d at 1414.

reconsideration of Phornsavanh’s motion for a new trial under the correct legal standard.⁸

On remand, the parties filed lengthy and comprehensive pleadings outlining their views of the evidence. Phornsavanh’s pleading, for example, was sixty-seven pages and included stills from the cell phone video that showed the seconds immediately preceding and immediately after the shooting. The State’s pleading was fourteen pages. Both pleadings were focused on the correct legal question — whether allowing the jury’s verdict to stand would constitute a miscarriage of justice.

In addition to the parties’ pleadings, the trial court held an hour-long oral argument on the motion. The oral argument has been transcribed and is part of the record on review.

After reviewing the pleadings and holding oral argument, the trial court issued a five-page written order granting Phornsavanh’s motion for a new trial in the interest of justice. The State filed a motion for reconsideration. After a second round of briefing, the trial court issued a written order denying the motion for reconsideration. In the order, the court explained that it had based its decision to grant a new trial on the “full record of this case, including this court’s contemporaneous observations of the witnesses and evidence when they were presented at trial, its recent review of the testimony and evidence presented at trial, and its review of the written and oral arguments presented by counsel on remand and on reconsideration.” The court also noted that it “respects the time and effort the parties and jury spent on this case and recognizes the seriousness of the decision before it.”

The State now challenges the trial court’s decision granting the motion for

⁸ *Phornsavanh*, 481 P.3d at 1161.

a new trial in the interests of justice. We have granted Phornsavanh's motion to expedite this appeal.

As part of its challenge to the trial court's decision, the State has filed a motion for remand, requesting that this Court remand the case to the trial court for further explanation of its decision. According to the State, the current record is inadequate for meaningful appellate review of the trial court's discretionary decision. Phornsavanh opposes the motion for remand.

Having reviewed all of the remand proceedings, we conclude that a remand will only further delay resolution of this case and is not required. The remand proceedings were extremely thorough and the trial court's view of the evidence and reasons for its decision can be discerned from the record currently before us.

Accordingly, IT IS ORDERED:

1. The State's motion for remand is DENIED.
2. The prior extension of time granted to the State is VACATED. The State's memorandum is now due on or before September 27, 2021.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Meredith Montgomery

cc: Judge Wolverton
Trial Court Clerk - Anchorage
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